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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,835	10/11/2001	Clemens Beisch	055842-0104	7771
22428	7590	11/16/2005	EXAMINER	
FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			GRANT II, JEROME	
			ART UNIT	PAPER NUMBER
			2626	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/973,835	Applicant(s) BEISCH ET AL.	
	Examiner Jerome Grant II	Art Unit 2626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 12-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

JEROME GRANT II  
PRIMARY EXAMINER

#### Attachment(s)

- |  |  |
|--|--|
| <p>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br/>Paper No(s)/Mail Date _____</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)<br/>Paper No(s)/Mail Date. _____</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____</p> |
|--|--|

### **Detailed Action**

**1.**

The drawings are objected to because the drawings do not depict the current claimed invention. Particularly, there are no drawings which:

1) explain the inhibition of the metamerism effects;

2) the most important gamma colors;

3) frequency modulated screen. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2.

The drawings are objected to under 37 CFR 1.83(a) because they fail to show the above mention limitations recited in the first numbered paragraph which are also not shown in the applicant's written specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to for failure to provide legends written in English.
4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 12-17 are rejected under 35 U.S.C. 112, first paragraph, because the best mode contemplated by the inventor has not been disclosed. Evidence of concealment of the best mode is based upon the failure to explain in the written specification or provide a drawing for how to avoid the "unexpected metameretic effects."

Claims 12-17 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12, line 3, applicant refers to "metameretic effects." It is not clear if applicant is using this term commensurate with the prior art or if applicant is trying to define his own limitation. The written specification does not support the common meaning of metameretic. Hence, it is not understood what context applicant is using this claimed limitation.

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In claims 14 and 17, second line, applicant refers to “ the most important gamut colors.” However, no previous definition or establishment of these colors has been made. Thus this limitation is indefinite.

In claim 17, applicant refers to “the gamut”, however, no gamut has been previously established.

Claims 16 and 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant refers to “frequency modulated screening”. However, there is no mention in the written specification of a teaching as to how the frequency modulated screening would be performed.

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5. Based of the numerous rejections on 112, a clear and concise search and rejection cannot be made. As best as can be determined from the specification and figures, the following rejection is being made.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook.

With respect to claim 12, Cook teaches a target for calibration of digital input devices comprising a plurality of fields with plural colors which could serve as bases (i.e., CMYK) whereby if the colors are smoothed between the edges they could reduced metamerism effects as defined by some technical dictionaries.

With respect to claim 13, Cook teaches a process specified through the use of CMYK colors as the base.

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With respect to claim 14, Cook teaches using a plurality of colors within the gamut of CMYK which within the gamut, one could designate a certain colors to be the most important to them.

6.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook in view of Rolleston.

With respect to claim 15, Cook teaches a target calibration comprised of colors of fields having different colors in different places.

Rolleston teaches repetition of the same colors on different places of the target, following a defined pattern.

Since Cook and Rolleston show targets, the purpose of using a target that has identical colors in difference spaces on the target verses one that does not, would have been obvious in view of Cook. It would have been obvious to one of ordinary skill in the art to replace target sheet 110 of Cook with printer target 200 as provided by Rolleston for the purpose of formulating a target sheet that provides a plurality of the same colors in different spaces.



With respect to claim 16, Cook teaches all of the subject matter except for the specific teaching of frequency modulated screening. It appears that the limitation could be suggested.

However, Rolleston specifically teaches the target member 200 being produced by a pseudo random frequency modulation.

Since Cook and Rolleston show targets, the purpose of using a target that performs modulated screening, would have been obvious in view of Cook. It would have been obvious to one of ordinary skill in the art to replace target sheet 110 of Cook with printer target 200 as provided by Rolleston for the purpose of generating frequency modulated screening via the pseudo random generation.

With respect to claim 17, , Cook teaches a target calibration comprised of colors of fields having different colors in different places.

Rolleston teaches repetition of the same colors on different places of the target, following a defined pattern. Rolleston specifically teaches the target member 200 being produced by a pseudo random frequency modulation.

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Since Cook and Rolleston show targets, the purpose of using a target that has identical colors in difference spaces on the target verses one that does not, would have been obvious in view of Cook. It would have been obvious to one of ordinary skill in the art to replace target sheet 110 of Cook with printer target 200 as provided by Rolleston for the purpose of formulating a target sheet that provides a plurality of the same colors in different spaces. In addition, Cook and Rolleston show targets, so that the purpose of using a target that performs modulated screening, would have been obvious in view of Cook. It would have been obvious to one of ordinary skill in the art to replace target sheet 110 of Cook with printer target 200 as provided by Rolleston for the purpose of generating frequency modulated screening via the pseudo random generation.

7.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerome Grant II whose telephone number is 571-272-7463. The examiner can normally be reached on Mon.-Thurs. from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kimberly A. Williams, can be reached on 571-272-7463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



J. Grant II

JEROME GRANT II  
PRIMARY EXAMINER